

**MINTZ LEVIN
COHN FERRIS
GLOVSKY AND
POPEO PC**

*Boston
Washington
Reston
New York
New Haven
Los Angeles
London*

*701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com*

Michael H. Pryor

*Direct dial 202 434 7365
mhpryor@mintz.com*

December 7, 2004

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*,
WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

On December 7, 2004, undersigned Counsel, James W. Akerhielm, Chief Executive Officer of NuVox, Inc. ("NuVox"), and Jake E. Jennings, Vice President for Regulatory and Industry Affairs for NuVox met with Christopher Libertelli, Senior Legal Advisor to Chairman Michael K. Powell. The purpose of this meeting was to discuss the need to continue providing access to UNE DS1 loops and DS1 EELs consistent with the comments previously submitted by NuVox in this proceeding. During the meeting, NuVox submitted the attached presentation including information based on numbers as of June 2004 demonstrating that forced reliance on even discounted special access pricing rather than UNE pricing would move NuVox from a positive EBITDA to negative.

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, NuVox requests that this notice be included in the public record of the above-referenced proceedings.

Very truly yours,

_____/s_____
Michael H. Pryor
Counsel to NuVox, Inc.

Enclosure



Continued Access to DS1 Loops and EELs Is Critical For Competition In The Small Business Market

December 7, 2004



Competitive Choices for Small Business

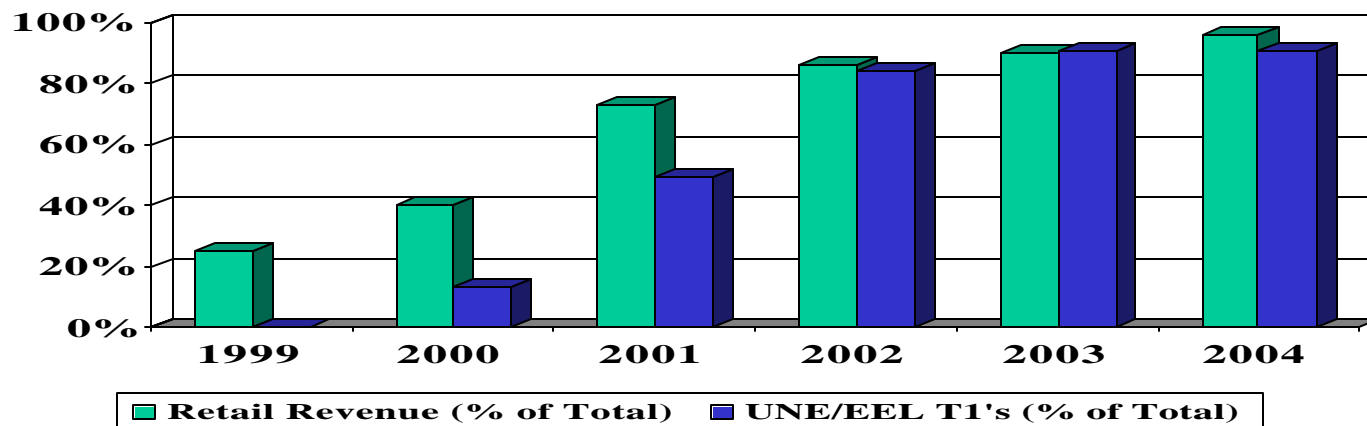
- NuVox brings competitive choice to small business
 - 40,000 small business customers averaging 14 lines
 - Small Business Customers spend approximately \$500 - \$700/month
 - Examples of small business:
 - Health Care
 - Professional Service
 - Legal
 - Insurance Agents
 - Banking
 - Hospitality Industry

Benefits of Competitive Choice

- NuVox's small business customers are, for the first time, receiving the benefits of broadband
 - Over 90% of NuVox's customers are upgraded to broadband when they switch their service from the Bell company
- Innovative Services
 - Integrated T1 Service (Voice/Data)
 - Dynamic Bandwidth
 - Enterprise Voice over Internet Protocol
 - Click to Talk
 - Single Telephone Number
 - Unified Messaging

Need for High Capacity Loops/EELs

- NuVox is able to provide competitive service to small business customers only because DS1 loop/EEL UNEs are available
- Trend – Retail Revenue and UNE/EEL T1 Mix



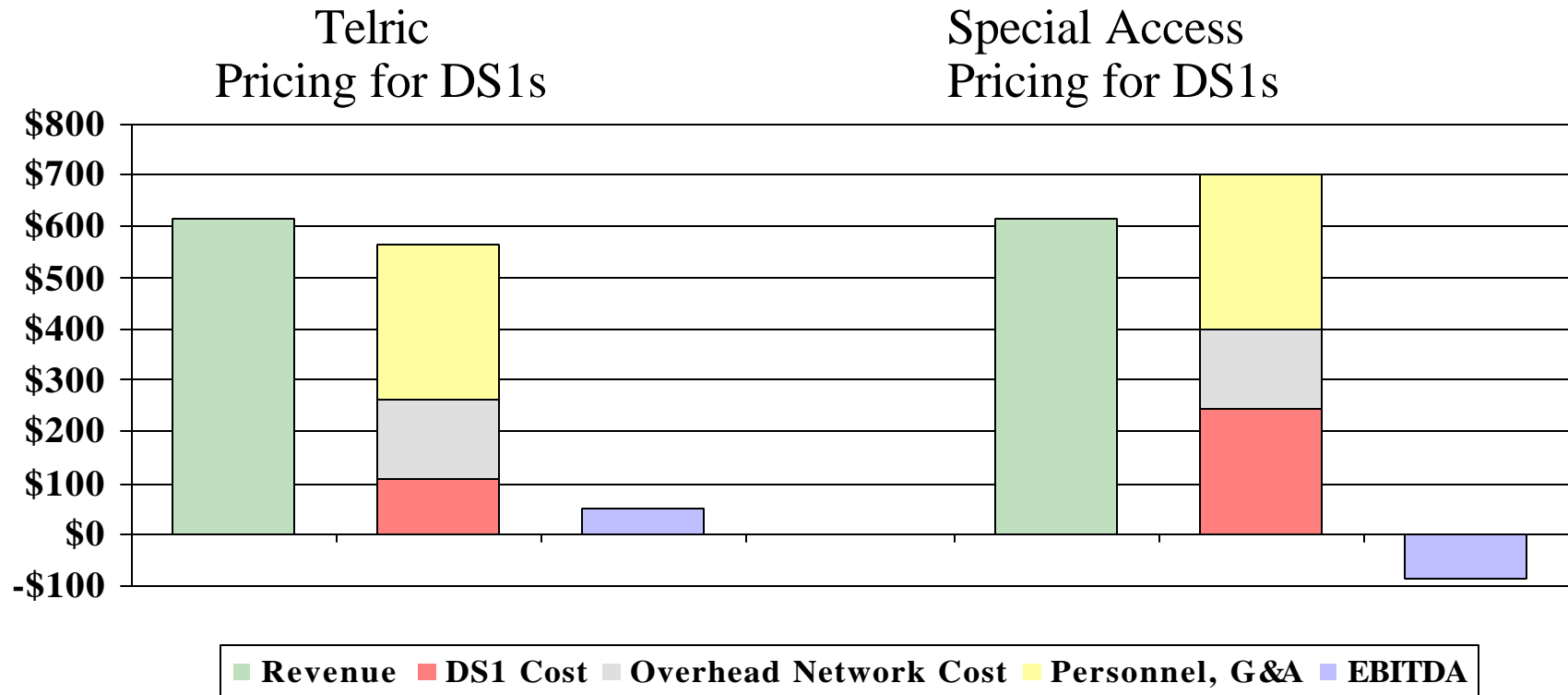
- Network deployment complete 4Q 2001
- EBITDA positive 2Q 2002

Lack of Alternatives

- No 3rd party alternatives in the marketplace other than the ILEC to serve small business customers
 - Cable is unavailable
 - NuVox study shows numbers are not ported to cable companies
 - Wireless is not a substitute
- Special Access is not a substitute
 - Materially increases cost
 - Puts CLEC at mercy of ILEC pricing decisions
 - Locks carriers onto ILEC networks

Special Access Is Not a Substitute

EBITDA Effect of Special Access Pricing



Self-Provisioning Is Not Viable for DS1 Service

- Self-provisioning is not economically viable for small business customers using DS1 capacity services
- Self-provisioning by fiber providers to a building does not demonstrate competitive choice for small business customers in that building
- No evidence of significant deployment of DS1-level capacity; even in buildings with fiber

Key Consideration for DS1 Loop Impairment Test

The record and *USTA II* fully support a national finding of impairment. Any alternative wholesale test must include the following principles.

Wholesale DS1 Providers:

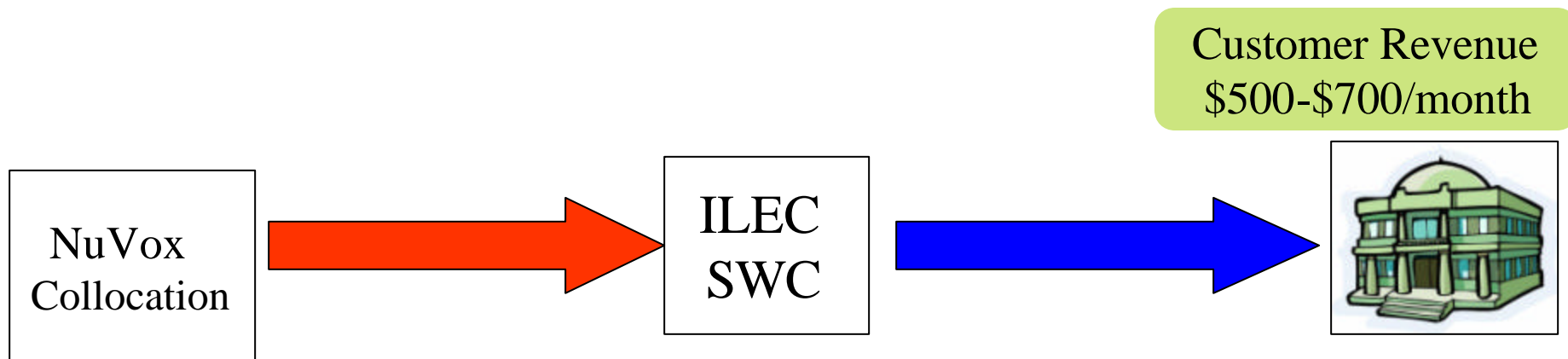
- Connect to the customer location. Being in the building is not enough if the wholesaler has no ability timely to connect to the particular customer;
- Must be connected to NuVox. Carriers typically demand substantial revenue commitments to establish connections that cannot be met with DS1 level facilities;
- Ability to install, provision and maintain in a timely and reliable manner
- There must be a sufficient number (at least two) to foster competitive pricing

The Same Impairment Test Should Apply to DS1 Transport When Used as Part of an EEL

- EELs are critical to NuVox's ability to bring competitive choice to small businesses
 - Forty-five percent of NuVox's circuits are EELs. EELs expand geographic reach from more than 250 collocations to more than 1500
- The Commission found that EELs promote facilities investment and innovation
- Applying a different test to transport component of the EEL may result in having to use multiple vendors for a single circuit
 - Leads to higher cost, longer installation intervals and more difficult repair

DS1 EEL Impairment

Just as with DS1 Loops, DS1 EELs are a single, end-to-end circuit whose cost must be recovered from a single, typically small business end user.



Interoffice

	UNE Rate	SPA Discounted Rate
Mileage @ 10miles	\$1.05	\$80.00
Fixed	\$34.19	\$65.00

Loop

UNE Rate	SPA Discounted Rate
\$41.02	\$123.00

Implementation – Key Considerations

- Determinations must be made by a neutral third party
- No certification or auditing unless requirements and substantiating evidence are clearly prescribed
 - CLECs may not know if wholesalers exist